

### Remarks

In the Office action, the Examiner finally rejected Claims 1-3, 5-12, and 14-22. However, it is the Applicant's position that the finality of that Office action was given prematurely.

Under present practice, a second action on the merits shall be made final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement.<sup>1</sup> In the Office action, the Examiner rejected claim 1 based on a new ground under 35 USC §103 as being obvious over **Gallo** (US 1,822,867). Claim 1 however, was merely amended to include the subject matter of claim 4. The Examiner could have raised this rejection previously, but did not. Therefore, the Examiner introduced a new ground of rejection that was not necessitated by the Applicant's amendments. The applicant therefore respectfully requests that the finality of the Office action be withdrawn.

### Reply Under 37 C.F.R. §1.116

In reply to the office action of May 18, 2005, it is respectfully requested the following remarks be entered and considered for further prosecution of the above mentioned application:

### Remarks

In the Office action, the Examiner rejected:

- Claims 1-3, 5-7, 9, 11 and 12 under are rejected under 35 USC §103(a) over **Weis** (US 3,704,868) in view of **Wissman** (US 4,722,664).

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<sup>1</sup> Manual of Patent Examining Procedure §706.07(a)

- Claims 1-3, 5-8, 11, and 12 under 35 USC §103(a) as being unpatentable over **Jost** (US 1,646,913) in view of **Wissman**.
- Claims 1-3, 5-7, 10-12 are rejected under 35 USC §103(a) as being unpatentable over **DiPlacido** (US 3,390,004) in view of **Wissman**.
- Claims 1-3, 5-9, 11, 12, and 14-19 are rejected under 35 USC 103(a) as being obvious over **Gallo** (US 1,822,867) in combination with **Wissman**.

In each case the Examiner's position was that the primary reference disclosed an impeller and used in combination with **Wissman's** PFA coating rendered Applicant's invention obvious.

However, it is the Applicant's position that the Examiner has sought to combine non-analogous art.<sup>2</sup> The Examiner states that all references relate to impellers and therefore are analogous art references, but this is an erroneous oversimplification of the technical art. In *In re Oetiker*, the applicant sought to patent a hose clamp that had a "hook" as an element. The application was rejected based on a hook for use in garments, wherein the Board reasoned that all hooking problems were analogous.<sup>3</sup> However, the court held the two were non-analogous arts. In the same way, the Examiner reasons that all impeller problems are analogous. However, the applicant's impeller here involves a different technical art than the arts relied on in the cited references.

The **Weis** apparatus is intended for aeration of liquids, **Jost** for improving the homogenous mixing of two liquids of different which are of different specific gravity, **Di Placido** is intended for improving the saponification of rosin with aqueous alkali metal solutions, and finally, **Gallo** is for propelling ships and submarines and the like. Applicant's device, on the

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<sup>2</sup> *In re Oetiker*, 977 F.2d 1443, 24 USPQ 1443 (Fed. Cir. 1992); MPEP §2141.01(a)

<sup>3</sup> *Id.* at

other hand, is intended to solve the problem of transporting shear sensitive polymer dispersions. Therefore, one of ordinary skill in the art, attempting to reduce shear, would not look to arts involving propelling a boat, or aerating or mixing liquids. Thus, the arts are not analogous, and should not be used in combination or singularly for obviousness rejections.

Additionally, Wissman, which the Examiner relies on for obviousness rejection, discloses PFA coating for corrosion resistance, however, with the problems to be solved in this case were reducing shear, avoiding formation of deposits and permitting improved cleaning of the impeller. As such the art is one of ordinary skill in the art would not look to such art to solve the problems disclosed by the Applicant.

The Examiner also rejected claims 20-22 under 35 USC §102 as being anticipated by Gallo. It is Examiner's position that the impeller disclosed by Gallo has curved vanes, wherein each of the vanes has bevels in the region where the vane is mounted on the shaft, the bevels of adjacent vanes being formed to create a surface of the pumping spaces which is curved in an inward direction relative to the interior of the hub in the area where the vane is mounted on the hub. However, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>4</sup> In regard to the Gallo reference, it does not disclose curved vanes, but as seen in Figure 1 of Gallo, the "leading edge" of each vane is at a 60 degree angle to a line perpendicularly intersecting the axis of the hub and the base blade, and the non-leading edge of the blade merely extends out.<sup>5</sup> Therefore not all the elements of the Applicant's invention is

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<sup>4</sup> MPEP §2131

<sup>5</sup> Figure 1 and lines 49-56 of Gallo.

disclosed and so the Applicant respectfully requests that the \$102 rejections be withdrawn.

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Respectfully submitted,  
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A handwritten signature in black ink, appearing to read 'Jason W. Bryan', written in a cursive style.

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